

CHAPTER OVERVIEW

This chapter describes policy and procedures for court related activities for placement of children.

- 2.1 Request and Summary for Authority to Remove a Child
- 2.2 Placement Activities
 - 2.2.1 Emergency Placements
 - 2.2.2 Planned Placements
- 2.3 Court Preparation Checklist
 - 2.3.1 Preparing the Family for Court
 - 2.3.2 Children's Service Worker Preparation for the Hearing
 - 2.3.3 At the Hearing

Attachment A: The Juvenile Court and Other Legal Considerations

2.1 Request and Summary for Authority to Remove a Child

Children's Service Workers may be expected to prepare reports and/or testify at a variety of court hearings in both family/juvenile court and civil courts. These hearings may include adjudication, dispositional, permanency reviews, adoptions, dissolution of marriage and criminal matters. Guidelines for preparing for court, preparing the family for court, preparing court reports, and testifying in court are provided below.

The Children's Service Worker shall prepare and submit a report for the court that includes a description of the facts on which the recommendation of removal of the child is made. When an emergency placement is made, this report shall be submitted to the court within three (3) working days of the placement or as required by the local jurisdiction. The requirements and methods of obtaining jurisdiction may vary in each circuit.

The Children's Service Worker shall provide the following information to the court for the purpose of requesting removal of the child:

- A. The reason for referral;
- B. Identification of the reasons which provide for the removal of the child, as identified in RSMo, Chapter 211;
- C. Family background and a history of their involvement with the Division;
- D. The family's current situation (i.e., home, emotional, health, and financial) and why the worker considers removal to be necessary;
- E. The Division's efforts to prevent the placement;

- F. The parents' response to the treatment plan and casework activities provided by Division staff and other agencies;
- G. The child's past and present physical, emotional, and mental condition, if known, and how the parents' actions or inactions have affected same;
- H. A suggested witness list and how each may be reached;
- I. Other pertinent information as required by the local court;
- J. A recommendation for removal, including a request for a finding that in the judgment of the courts, reasonable efforts were made to prevent removal of the child from the care of the parent(s) or that risk to the child was too great for the child to remain in the care of the parent(s);
- K. A recommendation as to the services most appropriate for the child and family, and whether the Division can provide or obtain these services. Where appropriate attach a copy of the CS-1; and
- L. A request for temporary custody for the purpose of a 30-day evaluation, if the child's service needs and most appropriate placement resource are not known at this time and if the court intends to place child in Children's Division (CD) custody.

2.2 Placement Activities

The Children's Service Worker shall request that form CS-33 be completed if protective custody is taken by law enforcement, physician, or the juvenile officer and no court order has been obtained.

All activities surrounding the placement of the child shall be recorded within ten (10) days.

Related Subject: Chapter 4.5, of this section, Selecting the Placement Resource; Chapter 4.4 of this section Placement Options; Chapter 2.2.1, of this section, Emergency Placements ; Chapter 5, of this section, Placement/Replacement of the Child, and Chapter 5, of this section, Attachment A, Summary Chart of Out-Of-Home Care Placement Resources Characteristics.

If placement is made and custody was given to the Division, it will be necessary to complete a long-range permanency treatment plan within 30 days of the Division's receipt of custody.

Related Subject: Chapter 2, of this section, Court Related Activities for Placement of Children; Chapter 3, of this section, Out-Of-Home Entry; and see the forms manual for CS-1 instructions.

NOTE: The child must be placed in the custody of the Division for the child to receive out-of-home care services. If payment will need to be made, the resource used must have a contract with the Division.

2.2.1 Emergency Placements

Emergency placements require a determination to be made that serious danger exists for a child if the child remains in the care of his/her parent(s) and that the delivery of treatment services will not provide immediate protection for a child.

The report to the court will likely be made after the placement has occurred and should indicate the emergency conditions necessitating out-of-home placement.

The report shall include a request that the court, in its dispositional order, make a determination that such conditions exist and that reasonable efforts to prevent placement would not secure, for the present, a safe environment for a child.

2.2.2 Planned Placements

The decision to recommend placement of a child may be very difficult for the Children's Service Worker and family. Placements that are not considered emergency placements provide the worker with a better opportunity to prepare the family for disruption. In these instances, the worker should:

- A. Involve the parent(s) in the decision to place the child(ren) and the worker's reason for making this recommendation, to the extent possible;
- B. Give the parent(s) written notice (two (2) weeks in advance when possible) of the agency's intent to petition the court to remove a child from the parent's custody;
 - 1. Write the notice in a clear, understandable manner and include the following information:
 - a) Specific reasons why the Division is recommending the removal of the child(ren);
 - b) A brief description of the type of hearing the court may conduct;

- c) The right to counsel and how counsel may be obtained;

Orally present the letter to the family in a face-to-face contact if parent(s) cannot read;

- C. Maintain support services and supervision to assist the parent(s) in providing safe, nurturing environment for the child(ren) until the court responds;
- D. Conduct, prior to recommending the court take jurisdiction, if time and circumstances permit, an evaluation of the child(ren)'s service needs and develop an out-of-home treatment plan with appropriate members of the Family Support Team (FST).

Related Subject: Chapter 1.3, of this section, Policy Requirements Relating to Juvenile Court Referrals and Placements; and forms manual for CS-1 instructions.

1. Complete appropriate sections of the CS-1;
2. If the child's service needs and treatment plan are not known at this time, request in writing temporary custody for the purpose of a 30-day evaluation;

NOTE: If the decision is made for the child to remain in care, whether in an emergency or planned placement, the Children's Service Worker and his/her supervisor should seek consultation from a second level supervisor or an IIS supervisor to obtain a second opinion. The IIS supervisor, acting in a consulting role, may be from either a contracted agency or CD.

2.3 Court Preparation Checklist

The following checklist has been designed to assist Children's Service Workers and families in preparing effectively for court hearings. The list is not exhaustive. The issues should be discussed, well in advance of the court proceeding, with the assigned attorney (or juvenile officer acting in this role) and family members of the court proceeding. This will assist all parties to be prepared more fully and may diminish some anxiety at the hearing.

2.3.1 Preparing the Family for Court

The court process may place the Children's Service Worker in an adversarial position with the family. The worker needs to explain this to the family early in the social treatment process. Despite this, the worker is still expected to work

with the family to improve the conditions necessitating Division intervention and the court hearing. The following guidelines will assist the worker in preparing the family for court:

- A. Review with the family and the child, if age appropriate, why you have requested court intervention and recommended removal of the child;
- B. Review with the family their progress or lack of progress in achieving the treatment plan;
- C. Review their legal rights;
- D. Describe your role in the court action and hearing;
- E. Assist the family in dealing with their feelings about the court action;
- F. Explain the possible outcomes of the court hearing;
- G. Respond to the child's possible feelings of guilt, fear, or uncertainty. This is particularly important when the recommendation is to remove the child from the home;
- H. Offer support to the family members. In cases where the recommendation is to remove the child, this support may be in the form of encouraging parents to actively participate in the removal process and subsequent services which might result in return of the child;
- I. Strive to have the judge hear the child's testimony in chambers rather than in the courtroom, if the child is to testify; and
- J. Prepare the child for what to expect if he/she is to testify. Explain that the child should answer truthfully and answer only those questions to which he/she knows the answer to. Assure the child that he/she is not to blame for the necessity of the hearing. Explain that the judge is there to make a determination as to what is best for the child.

Sometimes it is helpful to show the child the inside of the courtroom before the hearing to orient him/her to the surroundings such as where participants will be sitting. Role-playing may also be helpful to the child.

2.3.2 Children's Service Worker Preparation for the Hearing

The Children's Service Worker should contact the attorney (or juvenile officer acting in this role) who represents the court's interests if he/she is not contacted prior to the hearing. The following questions may be important to a clear understanding of how to testify at the court hearing:

- A. What is the issue at the hearing, i.e., removal from home, jurisdiction of court, termination of parental rights?
 1. What is the legal standard for the action?
 2. What specific facts does the attorney need to know to meet the legal standard?
 3. What specifically, does the worker need to know and testify about?
- B. Who is the judge and how formal or informal is the court?
 1. In a Formal Hearing:
 - a) Specific questions are asked on direct examination;
 - b) Regular objections by the opposing attorney can be expected;
 - c) The hearing is basically adversarial.
 2. In an Informal Hearing:
 - a) Narrative testimony (telling the story in his/her own words) on direct examination may be allowed;
 - b) Leading questions may be asked by the attorneys;
 - c) Few objections are raised during testimony.
 3. Is expert testimony needed?
 - a) What are the qualifications, in the jurisdiction for an expert witness?
 - b) Does the Children's Service Worker meet the qualifications?

- c) What information is needed to show that the worker can qualify as an expert witness?
- 4. Who is the opposing attorney?
 - a) What is this person like?
 - b) Does this attorney have experience in these matters?
 - c) What kinds of questions should the worker expect on cross-examination?
- 5. Is there a Guardian Ad Litem (GAL)?
 - a) If there is no GAL, should one be appointed?
 - b) The worker may want to call the GAL and discuss the case, if allowed.
 - c) What kinds of questions should the worker anticipate from the GAL?
- 6. Does the Children's Service Worker need to take the agency file? Has the case record been subpoenaed?

NOTE: In any judicial proceeding involving the custody of a child, the fact that a child abuse and neglect report may have been made pursuant to sections 210.110 to 210.165 shall not be admissible. However, nothing in this subsection shall prohibit the introduction of evidence from independent sources to support the allegations that may have caused a report to have been made (210.145, RSMo).

This provision of the law is to limit harassment reports. However, as a result, staff may be denied the ability to enter some evidence.

- 7. Is there evidence that is needed from other sources?
 - a) Other witnesses.
 - b) Written reports.

2.3.3 At the Hearing

These guidelines are provided to assist the Children's Service Worker during the hearing:

- A. Dress appropriately and professionally. How you present yourself to the court impacts on your credibility;
- B. Listen carefully to the attorney's questions;
- C. Be as specific as possible with answers to the attorney's questions, i.e., when asked how often you have seen the client, say "Three times from May 2000 through the present." NOT - "I guess 2 to 3 times in the last year or so;"
- D. If you don't understand a question, you did not hear it or you do not know the answer, say so. Ask that the question be repeated or rephrased if necessary;
- E. On cross-examination remember two things:
 - A. Always pause for a few seconds to give your attorney time to object to the question if he/she desires. If you blurt out an answer which is detrimental to your case and an observation could have been made, the court may allow the answer to be stricken, however everyone will have heard it. If you are asked a question by the opposing attorney and your attorney objects, do not say anything until the judge has ruled. Sometimes the attorneys will both present explanations for their positions. The judge will either sustain the objection, which means you do not have to answer the question, or the judge will overrule the objection, which means you do have to answer.
 - B. Always answer only what you are asked by the opposing attorney. Do not volunteer information. It is the opposing attorney's job to ask the questions and get the answers he/she feels will benefit his/her position. If you want to explain an answer, ask if you may explain. If the opposing attorney says no, you have at least alerted your own attorney to request an explanation or redirect.